

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM LEONARD PICKARD,

Plaintiff,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Case No. [06-cv-00185 CRB](#) (NC)

**TENTATIVE RULING ORDERING  
RELEASE OF DOCUMENTS  
FOLLOWING IN CAMERA  
REVIEW**

Re: Dkt. No. 198

**I. BACKGROUND**

In this Freedom of Information Act case, plaintiff William Leonard Pickard requests information about confidential informant Gordon Skinner, who testified against Pickard at his criminal trial. Most recently in the case, the district court denied both parties' fourth motions for summary judgment because "without context," the court could not know if releasing 325 relevant documents the government withheld as exempt under FOIA, "would compromise an important privacy interest, endanger any individual's (including Skinner's) physical safety, or run afoul of one of the [government's] other claimed exemptions." Dkt. No. 198 at 9.

The question is whether, per Pickard's request, the Court should release three categories of materials in the 325 documents: Skinner's name, information Skinner has voluntarily disclosed to the public, and Skinner's NADDIS number. Dkt. No. 198 at 11. The district court has tasked this Court with conducting *in camera* review of "whether the Case No. [06-cv-00185 CRB](#)

1 contents, as distinguished from the existence, of the officially confirmed records may be  
2 protected from disclosure under the DEA's claimed exemptions." *Id.* Because following  
3 denial of its motion for summary judgment, the government has provided no evidence to  
4 carry its burden of proving that documents in the three categories of materials qualify for  
5 exemptions, the Court's tentative ruling is to order the release of the three categories of  
6 materials. The government has 14 days to bring forward evidence of why FOIA  
7 exemptions should apply.

## 8 **II. DISCUSSION**

9 The government argues that the documents are exempt from disclosure under FOIA  
10 exemptions 7(C), 7(D), 7(E), and 7(F). Dkt. No. 225. However, Judge Breyer has already  
11 held that the government cannot assert a categorical exemption for "[a]ll records relating to  
12 Skinner" and has rejected the government's arguments that all 325 documents must be  
13 withheld. Dkt. No. 198 at 6. Specifically, he found that the government failed to show  
14 that exemption 7(E) applies to Skinner's NADDIS number, that release of Skinner's name  
15 would be dangerous, or that exemptions should apply to the portions of the DEA file that  
16 have been made public in *United States v. Pickard*, 733 F.3d 1297, 1304-05 (10th Cir.  
17 2013).

18 Judge Breyer stated, "the government's objection to revealing Skinner's NADDIS  
19 number seems to rely only on exemption 7(E) . . . It is not clear how release of Skinner's  
20 NADDIS number would help Skinner avoid detection or apprehension, as he is already  
21 incarcerated, or how it would help anyone else avoid detection or apprehension, as the  
22 number is presumably unique to Skinner. In addition, Plaintiff contends that Skinner's  
23 purported NADDIS number is already a matter of public record. See P Reply at 9. If so,  
24 then it is hard to see how exemption 7(E) applies." Dkt. No. 198 at 11.

25 At summary judgment, the government argued that Pickard had not shown "that the  
26 use of NADDIS numbers, or the numbers themselves, are commonly known to the public,"  
27 but Judge Breyer rejected that argument because "it is the government's burden to  
28 establish that an exemption applies." *Id.* at 10 n. 7 (citing *Yonemoto v. Dep't of Veterans*

1 *Affairs*, 686 F.3d 681, 692 (9th Cir. 2012) (agency’s burden to demonstrate that one of the  
2 statutory exemptions applies)).

3 Judge Breyer also observed that disclosure of some documents could be appropriate  
4 because “other court proceedings have resulted in the release of some materials  
5 presumably among the 325 documents at issue here.” Dkt. No. 198 at 10. In *United States*  
6 *v. Pickard*, No. 00-40104-01, 02-JTM (D. Kan. April 7, 2014), the court found that  
7 “government interest is sufficient to overcome the presumption in favor of public access to  
8 judicial records” as to some materials, but unsealed “those portions of the DEA file which  
9 have been made public,” including (a) Skinner’s criminal felony docket in Tulsa County,  
10 Oklahoma of July 31, 2006, (b) the Pottawattamie County Kansas order dated August 21,  
11 2000, (c) Skinner’s criminal felony docket for Tulsa County, Oklahoma of March 24,  
12 2004, (d) Skinner’s eleven-point risk assessment, and (e) Skinner’s confidential source  
13 agreement form dated October 18, 2000. Dkt. No. 198 at 11. Judge Breyer pointed out  
14 that “[s]uch disclosures would seem to undermine the government’s position here that  
15 none of the documents responsive to Plaintiff’s FOIA request can be released.” *Id.*  
16 (emphasis in original).

17 Since the denial of its motion for summary judgment, the government has supplied  
18 no evidence to address the deficiencies that Judge Breyer identified. Instead, the  
19 government simply states, “[t]he government identifies all legal authorities cited in support  
20 of the government’s arguments in Defendant’s Fourth Motion for Summary Judgment  
21 (ECF No. 184), in Defendant’s Reply in Support of Fourth Motion for Summary Judgment  
22 and Opposition to Plaintiff’s Cross Motion for Partial Summary Judgment (ECF No. 189),  
23 in Defendant’s Objections to Plaintiff’s Reply Evidence (ECF No. 193), in Defendant’s  
24 Statement of Recent Decision (ECF No. 195), and in Defendant’s Statement of Recent  
25 Decision (ECF No. 197)” and cites two supplemental cases without identifying facts in this  
26 case. Dkt. No. 225 at 1-2. In other words, the government reuses and reincorporates its  
27 arguments for summary judgment which the district court already found unavailing.

28 Further, after reviewing the documents in question, the Court does not find that the

1 documents provide a reason to withhold under the exemptions. As the district court stated,  
2 “[w]ithout *context*, the Court cannot know if releasing [the documents] would compromise  
3 an important privacy interest, endanger any individual’s (including Skinner’s) physical  
4 safety, or run afoul of one of the other claimed exemptions.” Dkt. No. 198 at 9 (emphasis  
5 added). The government’s brief at docket 225 fails to provide any more “context” or  
6 explain to this Court why release of the documents would be dangerous to Skinner or  
7 anyone else. Because the government has failed to do anything to bolster the arguments  
8 that Judge Breyer rejected at summary judgment, this Court’s tentative ruling is to release  
9 documents in the three categories of materials: Skinner’s name, information Skinner has  
10 voluntarily disclosed to the public, including information released in the federal court  
11 proceedings in Kansas, and Skinner’s NADDIS number. The government has 14 days to  
12 provide a reason not to release these documents. The parties must attend a telephonic case  
13 management conference on January 20, 2016, at 11 a.m. in San Jose, with both parties to  
14 file status reports on next steps proposed by January 13, 2016.

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16 **IT IS SO ORDERED.**

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18 Dated: December 24, 2015

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NATHANAEL M. COUSINS  
United States Magistrate Judge